

ARRA Addendum

Special Terms and Conditions for ARRA-Funded Loans

These Special Terms and Conditions are expressly incorporated by reference into the EmPOWER Commercial and Industrial Energy Efficiency Fund Program Standard (the “Standard”) issued by the Maryland Energy Administration (MEA). Unless otherwise defined herein, capitalized terms have the meaning given to them in the Standard. The Borrower agrees to abide by all terms and conditions contained herein, as well as any applicable federal and State laws and regulations. The Borrower shall ensure that any sub-recipient of any funds made available to the Borrower through the Program complies with the provisions of these Special Terms and Conditions, and all associated federal regulations and guidance.

Funds provided to the Borrower from MEA are subject to the provisions of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA or Recovery Act), federal regulations and ARRA implementing guidance from the federal government and MEA, as may be revised and updated from time to time (collectively “ARRA Requirements”).

The Borrower agrees that it will comply with all ARRA Requirements applicable to funding provided to the Borrower by MEA through the Program, including modifications or additional requirements that may be imposed by law, future guidance and clarifications of ARRA Requirements.

The Borrower agrees that to the extent ARRA Requirements conflict with State requirements, the ARRA Requirements shall control.

The Borrower agrees that if it or one of its subrecipients fails to comply with all applicable federal and State requirements governing the use of ARRA funds, MEA may withhold or suspend, in whole or in part, funds awarded under the Program, or recover misspent funds following an audit. This provision is in addition to all other remedies available to MEA under all applicable State and federal laws.

1. Recovery Act Information

The American Recovery and Reinvestment Act of 2009, Public Law 111-5 (ARRA or Recovery Act), was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients of ARRA funds shall use them in a manner that maximizes job creation and economic benefit.

The Borrower shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in the Recovery Act itself and as discussed below. The Borrower should begin planning activities for its subrecipients, including having them obtain a Dun & Bradstreet DUNS number (or updating their existing DUNS record) (see below for more information), and registering with the federal government’s Central Contractor Registration (CCR) if applicable.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary

to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, the Borrower must ensure that it and its subrecipients keep separate records for Recovery Act funds, and ensure those records comply with the requirements of the Recovery Act.

The Federal Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific final procedural requirements for the new reporting requirements. The Borrower will be provided or otherwise made aware of these details as they become available. The Borrower must comply with all requirements of the Recovery Act. If the Borrower believes there is any inconsistency between ARRA Requirements and other terms and conditions contained in the Standard, the issues are to be referred to the MEA for reconciliation.

2. Definitions

For purposes of this clause, “Covered Funds” means funds expended or obligated from appropriations under the Recovery Act. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the Standard, and any modifications thereto.

“Non-Federal employer” means any employer with respect to Covered Funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving Covered Funds; or with respect to Covered Funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

3. NEPA

The Borrower shall not use any part of the funds made available to it by MEA pursuant to the Standard for any activity or project that has not been deemed by the United States Department of Energy (DOE) to be categorically excluded from environmental assessment requirements under the provisions of the National Energy Policy Act (NEPA).

4. Segregation of Costs

The Borrower must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

5. Restrictions of Use of Funds

None of the ARRA-derived funds provided to the Borrower may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

6. Access to Records and Interviews

The Borrower agrees that with respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the Recovery Act, that the United States Inspector General or any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or the United States Comptroller General is authorized – (1) to examine any records of the Borrower or its subrecipients, or any State or local agency administering such award that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and (2) to interview the Borrower or any officer or employee of its subrecipients, or any State or local agency administering such award, regarding such transactions. Nothing in this Paragraph shall be interpreted to limit or restrict in any way any existing authority of the United States Comptroller General. The Borrower shall include in all of its agreements with subrecipients who are performing work funded in whole or in part with ARRA funds pursuant to this award, and shall require all subrecipients to include with lower tier subrecipients, the language provided in this Paragraph.

7. Whistleblower Protection

The Borrower and its subrecipients agree to abide by the requirements of Section 1553 of the Recovery Act, which are summarized below. They include, but are not limited to:

A. Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the federal Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to ARRA funds;
- A gross waste of ARRA funds;
- A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- An abuse of authority related to the implementation or use of ARRA funds; or
- A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

B. Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

C. Nonenforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration:

Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

D. Requirement to Post Notice of Rights and Remedies: The Borrower, and any subrecipient employer receiving Covered Funds under ARRA, shall post notice of the rights and remedies as required therein, including Recovery Act section 1553.

More information related to ARRA Whistleblower Protection requirements, including a downloadable poster, can be found at <http://www.oig.dol.gov/recovery/arrawhistleblowers.htm>.

8. False Claims Act

The Borrower and any of its subrecipients shall promptly refer to the United States Department of Energy or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

9. Information in Support of Recovery Act Reporting

The Borrower may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. The Borrower shall provide copies of backup documentation at the request of MEA or its designees.

10. Reporting and Registration Requirements

The Borrower shall adhere to the following reporting requirements in addition to any other reporting requirements listed herein, in the Standard, or otherwise made known to the Borrower by the MEA:

- (a) Funds provided to the Borrower by MEA through the Program require the Borrower to complete projects or activities which are funded under the Recovery Act and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- (b) The reports are due to MEA no later than the fifth (5th) calendar day of each month, for the previous month's reporting data, in which the Borrower receives the loan funded in whole or in part by the Recovery Act.
- (c) The Borrower and its subrecipients (including contractors and subcontractors) must maintain current registrations in the federal government's Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration. Note that individuals receiving the Borrower's funds

provided through MEA do not have to obtain a DUNS Number, but if they in turn provide Recovery Act funds to a contractor or subcontractor, the contractor and subcontractor should have a DUNS Number even though the individual is not required to have a DUNS Number. The Borrower should instruct individuals to collect these DUNS numbers from their contractors and subcontractors and provide to MEA as necessary (or in the alternative, the Borrower should obtain the DUNS numbers from the contractors and subcontractors and provide to MEA).

- (d) The Borrower shall report to MEA no later than the fifth (5th) calendar day of each month, for the previous month's reporting data, the information requested on Attachment A to this ARRA Addendum, as well as any changes, amendments or modifications to such reporting data.

11. Buy American Requirements

[This Paragraph is only applicable if the Recovery Act funds are being used by the Borrower or any subrecipient of the Borrower for the construction, alteration, maintenance or repair (including painting and decorating) of a public building or public work, and the total project value is estimated to be less than \$7,443,000.]

- (a) Definitions. As used in this award term and condition--

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

- (i) Processed into a specific form and shape; or
- (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference. (1) This term and condition implements Section 1605 of the Recovery Act, by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition. (2) This requirement does not apply to the material listed by the Federal Government as follows: **To Be Determined**

(3) The United States Department of Energy (DOE) may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the

cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act. (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including--

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Borrower could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Borrower does not submit a satisfactory explanation, the DOE award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the DOE award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the DOE award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the Recovery Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Borrower and its subrecipients shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost
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(dollars)*

Item 1:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

Item 2:

Foreign steel, iron, or manufactured good _____

Domestic steel, iron, or manufactured good _____

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[*Include all delivery costs to the construction site.]

12. Prevailing Wage Requirements (Davis-Bacon Act)

[This Paragraph is only applicable if the Borrower's project using any Recovery Act monies will involve construction, alteration, maintenance, or repair (including painting and decorating) valued at over \$2,000.]

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Prevailing wage rates may be found at <http://www.gpo.gov/davisbacon/allstates.html>. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct Recipients concerning application of the standard Davis-Bacon contract clauses set forth in that section. Recipients of Recovery Act monies shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts with contractors (and in subsequent contracts with sub contractors) that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating). These contractual requirements are also listed below in Paragraph 12 of these Special Terms and Conditions.

(b) For additional guidance on the wage rate requirements of section 1606, contact the MEA. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

13. Davis-Bacon Act Requirements

[This Paragraph is only applicable if the Borrower's project using any Recovery Act monies will involve construction, alteration, maintenance, or repair (including painting and decorating) valued at over \$2,000. If so, the Borrower is to ensure that the following contractual language is included in any contract with a subrecipient contractor or sub contractor for work on any project valued in excess of \$2,000.]

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from MEA and is financially accountable for the use of any MEA funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the Borrower for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act Required Provisions for Contracts

(a) Definition.--"Site of the work"—

(1) Means--

- (i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and
- (ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--
 - (A) Located in the United States; and
 - (B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

- (i) They are dedicated exclusively, or nearly so, to performance of the award or project; and
- (ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of an award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting

Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Rates of Wages

The minimum wages to be paid laborers and mechanics under this award involved in performance of work at the project site, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are included as an attachment to this award. These wage rates are minimum rates and are not intended to represent the actual wage rates that the Contractor may have to pay.

Payrolls and Basic Records

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the article entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any award work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this article. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the –

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the award and shall certify --

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this article and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the award during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the award.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this article.

(4) The falsification of any of the certifications in this article may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this article available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

Withholding of Funds

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this award or any other Federal award with the same Prime Contractor, or any other federally assisted award subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the award. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the award, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

Apprentices and Trainees

(a) Apprentices.

(1) An apprentice will be permitted to work at less than the predetermined rate for the work they performed when they are employed--

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship and Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this article, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees.

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in

a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this article shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this award.

Subcontracts (Labor Standards)

(a) Definition. "Construction, alteration or repair," as used in this article means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation--

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the article entitled Davis Bacon Act of this award, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the Davis-Bacon Act article, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the Davis Bacon Act article, in the "site of the work" definition).

(b) The Contractor or subcontractor shall insert in any subcontracts for construction, alterations and repairs within the United States the articles entitled--

(1) Davis-Bacon Act;

(2) Contract Work Hours and Safety Standards Act -- Overtime Compensation (if the article is included in this award);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination -- Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Davis-Bacon and Related Act Regulations; and

(11) Certification of Eligibility.

(c) The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the award articles cited in paragraph (b).

(d)(1) Within 14 days after issuance of the award, the Contractor shall deliver to the Contracting Officer a completed Standard Form (SF) 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the articles set forth in paragraph (b) of this article have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(e) The Contractor shall insert the substance of this article, including this paragraph (e) in all subcontracts for construction within the United States.

Contract Termination -- Debarment

A breach of the award articles entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act --

Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the whole award or in part for the Recovery Act covered work only, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

Compliance with Davis-Bacon and Related Act Regulations

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this award.

Disputes Concerning Labor Standards

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes and Appeals as defined in 10 CFR 600.22. Disputes within the meaning of this article include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

Certification of Eligibility

(a) By entering into this award, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government awards by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this award shall be subcontracted to any person or firm ineligible for award of a Government award by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Approval of Wage Rates

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this award must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination

included in the award. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

14. Required Use of Maryland Workforce Exchange

This loan is made possible in whole or in part by federal ARRA monies. To as quickly as possible help achieve the hiring of individuals into jobs that are ARRA-funded in whole or in part, the Borrower and any of its subrecipients shall:

- A. Post all jobs which are to be newly filled, whether for an entirely new job or for an existing job that is currently vacant, on the Maryland Workforce Exchange website of the Maryland Department of Labor, Licensing and Regulation. The link to the applicable website is: <https://mwe.dllr.state.md.us/default.asp?SessionUID=a>. Posting shall be done after funding is made available to the Borrower, as part of “start-up” procedures to fulfill the requirements of the Program terms and conditions.
- B. Continue to post for the duration of the loan agreement, on the Maryland Workforce Exchange new jobs that are created to perform under this loan, and existing jobs that are filled as a result of turnover of existing employees that fully or substantially work under this loan.
- C. Stipulate the requirements for posting job openings with the Maryland Workforce Exchange, as per clauses A and B of this Paragraph, as requirements for any sub recipient(s) the Borrower uses in the fulfillment of this loan.

The requirements to post ARRA-funded job openings on the Maryland Workforce Exchange, as per clauses A, B and C of this Paragraph, are not meant to be the exclusive means for the Borrower or any subrecipients to hire employees. The Borrower and any of its subrecipients may use any other means of job advertising and recruitment, in addition to the use of the Maryland Workforce Exchange.